

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

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**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

AUDIT REFERRAL: 15-02  
DATE REFERRED: April 10, 2015  
DATE OF NOTIFICATION: April 15, 2015  
DATE OF LAST RESPONSE: June 3, 2015  
DATE ACTIVATED: June 5, 2015

ELECTION CYCLE: 2012  
EXPIRATION OF SOL: February 20, 2016 to  
January 31, 2017

**SOURCE:**

AUDIT REFERRAL

**RESPONDENTS:**

Democratic Party of Wisconsin  
and Randy A. Udell in his official capacity as  
treasurer<sup>1</sup>

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)<sup>2</sup>  
52 U.S.C. § 30125(b)(1)  
11 C.F.R. § 106.7(d)(1)

**INTERNAL REPORTS CHECKED:**

Audit Documents  
Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter was generated by a Commission audit of the Democratic Party of Wisconsin ("DPW") covering the period of January 1, 2011, through December 31, 2012. The Commission approved the Final Audit Report (Attachment 1) on March 25, 2015, and the Audit Division referred the following two findings to the Office of the General Counsel ("OGC") for possible

<sup>1</sup> Michael F. Childers was the treasurer of record for the Democratic Party of Wisconsin during the relevant period (2011-12 election cycle).

<sup>2</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 enforcement action: (1) DPW misstated its disbursements in 2011;<sup>3</sup> and (2) DPW failed to  
2 maintain required monthly payroll logs to document the percentage of time each employee spent  
3 in connection with a federal election. OGC notified DPW of the referral, and DPW filed a  
4 response,<sup>4</sup> reiterating the substantive arguments previously presented and considered by the  
5 Commission during the audit process. DPW also requests that the Commission close the file and  
6 take no further action because it claims to have used best efforts in reporting; the errors were *de*  
7 *minimis*; maintaining monthly payroll logs is burdensome; and the failure to maintain these logs  
8 did not result in a finding that it used non-federal funds for federal activity. For the reasons  
9 discussed below and the facts, analysis, and findings set forth in the Final Audit Report, which is  
10 herein incorporated by reference, we recommend that the Commission find reason to believe  
11 that:

- 12 • DPW violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll  
13 logs; and
- 14 • DPW violated 52 U.S.C. § 30104(b) by misstating its disbursements for 2011.

15 Additionally, we recommend that the Commission authorize pre-probable cause conciliation.

## 16 II. FACTUAL AND LEGAL ANALYSIS

### 17 A. Failure to Maintain Monthly Payroll Logs

18 The Act prohibits state, local, and district committees of political parties from using non-  
19 federal funds to pay for federal election activity, and this prohibition applies to the salary

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<sup>3</sup> According to the Audit Referral, the misstatement of disbursements for 2011 meets the criteria for referral to the Office of Alternative Dispute Resolution but was referred to OGC pursuant to Commission policy because Finding 2 (Recordkeeping for Employees) was referable to OGC.

<sup>4</sup> While DPW's response to the referral addresses all the misstated financial activity identified in the audit, this report only addresses the activity (misstatement of disbursements for 2011) that was referred.

1 that DPW used non-federal funds for federal activity.<sup>9</sup> These arguments are unconvincing. First,  
2 the logs are necessary to ensure that activities deemed allocable are not paid for with a  
3 disproportionate amount of non-Federal funds.<sup>10</sup> Here, because it failed to keep the required  
4 logs, DPW was never able to verify that its employees were properly paid from allocated funds.  
5 Further, though DPW characterizes the recordkeeping as “burdensome,” it provided no  
6 information that it even tried to maintain such records. Moreover, in 2011 and 2012, the Reports  
7 Analysis Division sent DPW 17 Requests for Additional Information (“RFAs”) asking it to  
8 clarify whether its allocated payments were for employees who spent 25 percent or less of their  
9 time on Federal Election Activity (“FEA”) or activities in connection with a federal election.<sup>11</sup>  
10 These RFAs put DPW on repeated notice that it needed to be able to document its employees’  
11 federal and non-federal activities. In response, DPW made no effort to meet this regulatory  
12 recordkeeping obligation. Accordingly, we recommend that the Commission find reason to  
13 believe that DPW violated 11 C.F.R. § 106.7(d)(1).

14 **B. Misstatement of Disbursements**  
15

16 The Act requires committee treasurers to file reports of disbursements in accordance with  
17 the provisions of 52 U.S.C. § 30104(b). The Audit staff reconciled DPW’s reported financial  
18 activity with its bank records and determined that DPW misstated its disbursements resulting in  
19 an understatement of \$184,702 in 2011. The understatement resulted from: (1) in-kind

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<sup>9</sup> Resp. at 7.

<sup>10</sup> See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49,079 (July 29, 2002) (revised explanation and justification).

<sup>11</sup> In 2011, DPW received such RFAs for the February, March, April, May, and Year-End Reports, and in 2012, for the entire reporting period. In response to the RFAs, DPW has stated that its payroll-related payments were for employees who spent 25 percent or less of their compensated time on FEA or other activities in connection with a federal election.

1 payments of committee employees.<sup>5</sup> Allocations of salaries, wages, and fringe benefits shall be  
2 undertaken as follows: (1) employees who spend 25 percent or less of their compensated time in  
3 a given month on federal election activities or on activities in connection with a federal election  
4 must either be paid only from the federal account or have their expenses allocated as  
5 administrative costs; (2) employees who spend more than 25 percent of their compensated time  
6 in a given month on federal election activities or on activities in connection with a federal  
7 election must be paid only from a federal account; and (3) employees who spend none of their  
8 compensated time in a given month on federal election activities or on activities in connection  
9 with a federal election may be paid entirely with funds that comply with state law.<sup>6</sup>  
10 Consequently, political party committees are required to keep a monthly log of the percentage of  
11 time each employee spends in connection with a federal election.<sup>7</sup>

12 As set forth in the Final Audit Report, the Commission found that DPW failed to  
13 maintain monthly payroll logs for \$2,221,526 of salary, wage, and benefit payments made in  
14 2011 and 2012. Of that amount, DPW disclosed \$2,192,554 as having been paid with an  
15 allocation of federal and non-federal funds, and \$28,972 as having been paid from an exclusively  
16 non-federal account during the periods in which the employee was also paid with federal funds.<sup>8</sup>

17 DPW acknowledges that it did not keep payroll logs, but argues for a dismissal because  
18 the recordkeeping requirement is burdensome and the Audit Report does not contain a finding

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<sup>5</sup> See 52 U.S.C. § 30125(b)(1).

<sup>6</sup> 11 C.F.R. § 106.7(d)(1).

<sup>7</sup> *Id.*

<sup>8</sup> Attach. I at 13.

1 contributions, not reported as disbursements (\$2,565); (2) vendor refunds reported as negative  
2 entries on Schedule B (Itemized Disbursements) rather than as an offset to operating  
3 expenditures on Schedule A (Itemized Receipts) (\$57,545); (3) unreported transfers to non-  
4 federal accounts (\$15,119); (4) unreported disbursements and fees (\$111,793); (5) reported  
5 disbursements, not supported by a check or debit (-\$7,317); (6) unreported vendor fees (\$4,451);  
6 and (7) unexplained differences (\$546).<sup>12</sup>

7 DPW does not dispute the audit findings and acknowledges that Commission regulations  
8 require that disclosure reports be accurate,<sup>13</sup> but it nevertheless argues that the Commission  
9 should not pursue this matter because DPW met the standard for “best efforts” by timely filing  
10 all of its disclosure reports in 2011 and 2012 despite a high volume of activity, and that the  
11 “small handful” of errors discovered by the Audit Division are *de minimis*.<sup>14</sup> DPW also asserts  
12 that it cooperated with the Commission during the audit by correcting its reporting errors on  
13 amended disclosure reports, it did not act in bad faith, and it did not make or receive excessive or  
14 prohibited contributions.<sup>15</sup>

15 While it is true that DPW timely filed all of its reports, the reports must also be accurate,  
16 and in this instance, the Audit Division discovered material errors on DPW’s disclosure  
17 reports.<sup>16</sup> The best efforts provision requires that best efforts be used “to obtain, maintain and

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<sup>12</sup> See Attach. 1 at 10.

<sup>13</sup> See 11 C.F.R. § 104.14(d).

<sup>14</sup> Resp. at 4, 5, 6 (June 3, 2015).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> See Attach. 1 at 9.

1 submit the information required by [the] Act...."<sup>17</sup> In determining whether a committee has  
2 shown best efforts, the Commission considers the affirmative steps taken to keep adequate  
3 records and make accurate reports, as well as the reasons for its failure to obtain, maintain, or  
4 submit the information properly.<sup>18</sup> DPW, however, has not provided persuasive information to  
5 substantiate its claim that it made best efforts to submit accurate disclosure reports.<sup>19</sup> Most  
6 notably, it has not shown that it took relevant precautions to avoid the errors it made, nor were its  
7 errors due to reasonably unforeseen circumstances.<sup>20</sup> Further, DPW's characterization of the  
8 reporting errors as *de minimis* is based on its own subjective assessment and not on any specific  
9 threshold in the Act or Commission regulations. In fact, the misstatement of disbursements for  
10 2011 met the criteria for referral to OGC based on the Commission's Audit Materiality  
11 Thresholds for Unauthorized Committees.

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13  
14 Finally, Respondent's lack of bad faith is not germane here as we  
15 are not recommending that the Commission make a knowing and willful finding. Accordingly,

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<sup>17</sup> See 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7(a) ("[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.") See also, Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438 (June 7, 2007) ("Best Efforts Policy").

<sup>18</sup> Best Efforts Policy at 31,440.

<sup>19</sup> *Id.* (placing burden on respondent to present evidence sufficient to demonstrate best efforts were made). In fact, as previously discussed, DPW appeared to have made no efforts to maintain monthly payroll logs during the election cycle despite receiving multiple RFAs from RAD reminding it of the need to track the amount compensated time employees spent on federal activity.

<sup>20</sup> Best Efforts Policy at 31,440.

we recommend that the Commission find reason to believe that DPW violated 52 U.S.C. §  
30104(b).

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3 **IV. RECOMMENDATIONS**

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1. Open a MUR in AR 15-02;

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2. Find reason to believe that the Democratic Party of Wisconsin and Randy A. Udell in his official capacity as treasurer violated 11 C.F.R. § 106.7(d)(1);

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3. Find reason to believe that the Democratic Party of Wisconsin and Randy A. Udell in his official capacity as treasurer violated 52 U.S.C. § 30104(b);

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4. Authorize conciliation with the Democratic Party of Wisconsin and Randy A. Udell in his official capacity as treasurer prior to a finding of probable cause to believe;

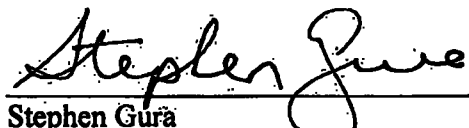
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- 1 5. . . . .
- 2 6. Approve the attached Factual and Legal Analysis; and
- 3 7. Approve the appropriate letter.

4 8.4.15

5 Date



Stephen Gura  
Deputy Associate General Counsel for Enforcement



Peter G. Blumberg  
Assistant General Counsel



Dominique Dillenseger  
Attorney

18 Attachments:

- 19 1. Final Audit Report of the Commission on the Democratic Party of Wisconsin
- 20
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# Final Audit Report of the Commission on the Democratic Party of Wisconsin

(January 1, 2011 - December 31, 2012)

## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act<sup>1</sup> (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>2</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 3)

The Democratic Party of Wisconsin is a state party committee headquartered in Madison, Wisconsin. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 3)

• Receipts	
o Contributions from Individuals	\$ 6,744,785
o Contributions from Political Committees	2,692,509
o Transfers from Affiliated and Other Political Committees	8,676,624
o Transfers from Non-federal Accounts	1,400,151
o Other Receipts	484,290
Total Receipts	\$ 19,998,359
• Disbursements	
o Operating Expenditures	\$ 11,536,529
o Contributions to Other Political Committees	25,500
o Transfers to Affiliated and Other Political Committees	51,261
o Federal Election Activity	7,991,072
o Other Disbursements	159,088
Total Disbursements	\$ 19,763,450

## Commission Findings (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Employees (Finding 2)

## Additional Issue (p.4)

- Recordkeeping for Employees

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to the new Title 52 of the United States Code.

<sup>2</sup> 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

# **Final Audit Report of the Commission on the Democratic Party of Wisconsin**

**(January 1, 2011 - December 31, 2012)**



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## Part I Background

### Authority for Audit

This report is based on an audit of the Democratic Party of Wisconsin (DPW), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104 (formerly 2 U.S.C. §434). Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

### Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the completeness of records; and
6. other committee operations necessary to the review.

### Commission Guidance

#### Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with DPW requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed DPW representatives of the payroll log requirement and of the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to DPW employees paid with 100 percent federal funds and reported as such.

Attachment 1

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**Audit Hearing**

DPW declined the opportunity for a hearing before the Commission on the matters presented in this report.

Attachment 1  
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## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	April 21, 1975
• Audit Coverage	January 1, 2011 - December 31, 2012
<b>Headquarters</b>	Madison, Wisconsin
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Twelve Federal, Two Non-federal
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Michael F. Childers
• Treasurer During Period Covered by Audit	Michael F. Childers
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2011</b>	<b>\$ 53,631</b>
<b>Receipts</b>	
o Contributions from Individuals	6,744,785
o Contributions from Political Committees	2,692,509
o Transfers from Affiliated and Other Political Committees	8,676,624
o Transfers from Non-federal Accounts	1,400,151
o Other Receipts	484,290
<b>Total Receipts</b>	<b>\$ 19,998,359</b>
<b>Disbursements</b>	
o Operating Expenditures	11,536,529
o Contributions to Other Political Committees	25,500
o Transfers to Affiliated and Other Political Committees	51,261
o Federal Election Activity	7,991,072
o Other Disbursements	159,088
<b>Total Disbursements</b>	<b>\$ 19,763,450</b>
<b>Cash-on-hand @ December 31, 2012</b>	<b>\$ 288,540</b>

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## Part III Summaries

### Commission Findings

#### Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of DPW's reported financial activity with bank records revealed a misstatement of receipts and disbursements for 2011 and 2012. For 2011, DPW understated its receipts by \$169,196 and its disbursements by \$184,702. In 2012, DPW overstated its receipts by \$402,707 and its disbursements by \$381,326. In response to the Interim Audit Report recommendation, DPW amended its disclosure reports to materially correct the misstatements.

The Commission approved a finding that DPW misstated its financial activity for calendar years 2011 and 2012. (For more detail, see p. 6)

#### Finding 2. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that DPW did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to DPW employees totaling \$3,627,262, for which DPW did not maintain monthly payroll logs. This consisted of \$2,192,554, for which payroll was allocated with federal and non-federal funds, and \$1,434,708, for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, DPW acknowledged the need to improve its system of maintaining monthly time logs. As a result, DPW developed a web-based system for employees to track time associated with federal election activity.

The Commission approved a finding that DPW failed to keep monthly payroll logs for the \$2,192,554 that DPW disclosed as having been paid with an allocation of federal and non-federal funds and \$28,972 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to \$1,405,736 in payroll paid exclusively with non-federal funds and, as such, these expenses are presented as an "Additional Issue". (For more detail, see p. 10)

### Additional Issue

#### Recordkeeping for Employees

As detailed in Finding 2 above, DPW did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to DPW employees totaling \$3,627,262, for which DPW did not maintain monthly payroll logs. This consisted of \$2,192,554, for which payroll was allocated with federal and non-

federal funds, and \$1,434,708, for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, DPW acknowledged the need to improve its system of maintaining monthly time logs. As a result, DPW developed a web-based system for employees to track time associated with federal election activity.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding that DPW failed to maintain monthly payroll logs for the \$1,405,736 in payroll paid from an exclusively non-federal account during certain months. Pursuant to Commission Directive 70<sup>3</sup>, these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$1,405,736 are not included in Finding 2. (For more detail, see p. 13)

<sup>3</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf)

## Part IV

### Commission Findings

#### Finding 1. Misstatement of Financial Activity

##### Summary

During audit fieldwork, a comparison of DPW's reported financial activity with bank records revealed a misstatement of receipts and disbursements for 2011 and 2012. For 2011, DPW understated its receipts by \$169,196 and its disbursements by \$184,702. In 2012, DPW overstated its receipts by \$402,707 and its disbursements by \$381,326. In response to the Interim Audit Report recommendation, DPW amended its disclosure reports to materially correct the misstatements.

The Commission approved a finding that DPW misstated its financial activity for calendar years 2011 and 2012.

##### Legal Standard

**Contents of Reports.** Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5) (formerly 2 U.S.C. §434(b)(1), (2), (3), (4) and (5)).

##### Facts and Analysis

##### A. Facts

As part of audit fieldwork, the Audit staff reconciled DPW's reported financial activity with its bank records for 2011 and 2012. The reconciliation determined that DPW misstated receipts and disbursements for 2011 and 2012. The following charts outline the discrepancies between DPW's disclosure reports and its bank records, and the succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$56,862	\$53,631	\$3,231 Overstated
Receipts	\$3,758,853	\$3,928,049	\$169,196 Understated
Disbursements	\$3,497,621	\$3,682,323	\$184,702 Understated
Ending Cash Balance @ December 31, 2011	\$316,089 <sup>4</sup>	\$299,357	\$16,732 Overstated

<sup>4</sup> DPW miscalculated its ending cash balance. It should have been \$318,094 (a difference of \$2,005). Using the correct ending cash balance (\$318,094), the discrepancy is \$18,737.

The beginning cash balance was overstated by \$3,231 and is unexplained, but likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• Transfers from non-federal accounts, not reported	+	\$35,130
• In-kind contributions, not reported as receipts	+	2,565
• Vendor refund, not reported	+	9,198
• Vendor refunds reported as negatives	+	57,545
• Interest, not reported	+	145
• Political committee and individual contributions, not reported	+	73,851
• Reported refunds and contributions not supported by a credit or deposit	-	9,260
• Unexplained differences	+	22
Net Understatement of Receipts	+	<u>\$169,196</u>

The understatement of disbursements resulted from the following:

• In-kind contributions, not reported as disbursements	+	\$2,565
• Vendor refunds reported as negatives <sup>5</sup>	+	57,545
• Transfers to non-federal accounts, not reported	+	15,119
• Disbursements and fees, not reported	+	111,793
• Reported disbursements not supported by a check or debit	-	7,317
• Vendor fees, not reported	+	4,451
• Unexplained differences	+	546
Net Understatement of Disbursements	+	<u>\$184,702</u>

The \$16,732 overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$2,005 mathematical discrepancy in calculating the ending cash balance.

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$316,089	\$299,357	\$16,732 Overstated
Receipts	\$16,473,017	\$16,070,310	\$402,707 Overstated
Disbursements	\$16,462,453	\$16,081,127	\$381,326 Overstated
Ending Cash Balance @ December 31, 2012	\$290,921 <sup>6</sup>	\$288,540	\$2,381 Overstated

<sup>5</sup> DPW reported vendor refunds as negative entries on Schedule B (Itemized Disbursements). Unless the refund is for allocable federal and non-federal expenditures or allocable federal and Levin expenditures, the refund should be reported as an offset to operating expenditures on Schedule A (Itemized Receipts).

<sup>6</sup> DPW miscalculated its ending cash balance. It should have been \$326,654 (a difference of \$35,733).

- Using the correct ending cash balance (\$326,654), the discrepancy is \$38,114.

The overstatement of receipts resulted from the following:

• Vendor refunds reported as negatives	+	\$15,312
• In-kind contributions, not reported as receipts	+	9,186
• Contribution from a political committee, not reported	+	1,000
• Transfers from non-federal accounts, not reported	+	22,310
• Transfers from the National Party, not reported	+	31,270
• Incorrectly disclosed transfers from non-federal accounts	-	43,160
• Contributions from joint fundraisers reported twice	-	457,814
• Unexplained differences	+	19,189
<b>Net Overstatement of Receipts</b>	-	<b><u>\$402,707</u></b>

Regarding the \$457,814 in contributions from joint fundraisers reported twice, the Audit staff noted the following. In its October 2012 monthly reports, DPW correctly reported transfers from two joint fundraiser representatives on Schedule A (Itemized Receipts). DPW also reported the contributions from the individuals received at these joint fundraising events. However, DPW should only have reported the contributions from the individuals as memo entries. As a result of reporting both the transfer of total contributions received from the joint fundraisers and each of the contributions from the individuals, DPW overstated the receipts it received from these joint fundraising events.

The overstatement of disbursements resulted from the following:

• Vendor refunds reported as negatives	+	\$15,312
• Transfers to non-federal accounts, not reported	+	27,179
• In-kind contributions, not reported as disbursements	+	9,186
• Duplicate reported payments to vendor	-	514,424
• Unexplained differences	+	81,421
<b>Net Overstatement of Disbursements</b>	-	<b><u>\$381,326</u></b>

Regarding the \$514,424 in duplicate reported payments, the Audit staff noted the reporting errors related to a single vendor that produced mailers for DPW. Also, all three duplicate reported disbursements were reported in the 2012 Pre-General report.

The \$2,381 overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$35,733 mathematical discrepancy in calculating the ending cash balance.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatement of disbursements with DPW representatives at the exit conference. DPW representatives asked questions for clarification and said they would respond after having time to thoughtfully review each issue. The Audit staff provided work papers detailing the misstatement of receipts to DPW representatives after the exit conference. DPW did not provide a response to either the disbursements or receipts misstatements.

The Interim Audit Report recommended that DPW amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments.

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The Interim Audit Report further recommended that DPW adjust the cash balance as necessary on its most recent disclosure report, noting that the adjustment was the result of prior-period audit adjustments.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, DPW amended the disclosure reports to materially correct the misstatements.

Counsel explained that while DPW does not contest the discrepancies identified by the auditors as part of the misstatement finding, the nature of these discrepancies in many cases involved the form of the disclosure provided, not its substance. Counsel specifically commented on the recommended reporting adjustments of the Audit staff concerning vendor refunds and joint fundraising contributions. For example, DPW reported vendor refunds as negative entries on Schedule B (Itemized Disbursements) instead of as offsets to operating expenditures on Schedules A (Itemized Receipts) as recommended by the Audit staff. With respect to reporting adjustments for joint fundraising contributions, Counsel stated that the error in reporting occurred because the wrong box was selected in the campaign finance reporting software used to prepare its reports. Counsel further added that these contributions were reported to the Commission on a timely, individualized basis, even if its cash position was incorrect due to the reporting error.

In response, the Audit staff would like to note that Counsel's arguments for the activity noted above are based on the assumption that mere disclosure of these financial transactions is sufficient, regardless of the overall accuracy of its reports. However, the Commission's regulations under 11 CFR §104.14(d) also require disclosure reports to be accurate. DPW's method of disclosure resulted in inaccuracies in total receipts, total disbursements, and cash balances. Under 52 U.S.C. §30104(b)(1), (2), (4)<sup>7</sup> and 11 CFR §104.3(a)(1), (2), (b)(1), committees must report the amount of beginning cash-on-hand, the total amount of all receipts and all disbursements, *as well as* the total amount of receipts and disbursements in various enumerated categories. Therefore, the overall totals and individual totals for specific types of receipts and disbursements are significant for disclosure purposes and accuracy.

The Audit staff agreed that vendor refunds and the joint fundraiser receipts were included in DPW's original disclosure reports. However, because the transactions were either reported twice or reported as negative entries, DPW's receipt, disbursement and cash balances were misstated. To materially correct these misstatements, DPW filed amended disclosure reports for 2011 and 2012.

### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that DPW filed amended disclosure reports that materially corrected the misstatement of financial activity.

### **E. Committee Response to the Draft Final Audit Report**

DPW's response to the Draft Final Audit Report provided no additional comments.

<sup>7</sup> Formerly 2 U.S.C. §434(b)(1), (2) and (4).

### **Commission Conclusion**

On February 12, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DPW misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

## **Finding 2. Recordkeeping for Employees**

### **Summary**

During audit fieldwork, the Audit staff determined that DPW did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to DPW employees totaling \$3,627,262, for which DPW did not maintain monthly payroll logs. This consisted of \$2,192,554, for which payroll was allocated with federal and non-federal funds, and \$1,434,708, for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, DPW acknowledged the need to improve its system of maintaining monthly time logs. As a result, DPW developed a web-based system for employees to track time associated with federal election activity.

The Commission approved a finding that DPW failed to keep monthly payroll logs for the \$2,192,554 that DPW disclosed as having been paid with an allocation of federal and non-federal funds and \$28,972 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to \$1,405,736 in payroll paid exclusively with non-federal funds and, as such, these expenses are presented as an "Additional Issue".

### **Legal Standard**

**Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

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## Facts and Analysis

### A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. DPW did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, DPW did not maintain monthly logs for \$3,627,262 in payroll.<sup>8</sup> This amount includes payroll paid as follows to DPW employees.

- i. Employees reported on Schedule H4 and paid with a mixture of federal and non-federal funds during the same month (totaling \$2,192,554).
- ii. Employees reported on Schedule H4 and/or Schedule B and also paid with both a mixture of federal and non-federal funds and exclusively non-federal funds during the same month (totaling \$28,972); and
- iii. Employees paid exclusively with non-federal funds in a given month and not reported by DPW (totaling \$1,405,736).<sup>9</sup>

### B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirement with DPW representatives during the audit fieldwork and at the exit conference. DPW representatives asked questions for clarification and said they would respond after having time to thoughtfully review each issue. Subsequently, DPW representatives stated that payroll logs had not been identified nor other evidence indicating that they were maintained. However, DPW provided a statement contending that other information confirmed the basis on which employees were paid. DPW representatives supported this statement by providing exhibits with a basic job description for the employees and a narrative that stated, in part,

"Beginning in February, 2011 and continuing through the summer of 2012, Wisconsin held multiple elections in connection with various recalls of state-level elected officials. Recall elections for nine Wisconsin state senators were held during the summer of 2011. Recall elections for the Governor, Lieutenant Governor and four additional state senators were held during the spring and summer of 2012. Throughout 2011 and through the summer of 2012, the Committee and its staff were engrossed in these nonfederal elections. Employees directly involved in supporting nonfederal candidates performed no work in connection with federal elections, while other employees were paid entirely with federal funds."

In addition, DPW submitted documentation identifying non-federal and federal election dates and events for both years 2011 and 2012, stating, "...as a result of these events, the Committee hired staff to work exclusively in connection with various nonfederal [sic] recall elections."

<sup>8</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

<sup>9</sup> Some of these employees were paid from federal funds and reported as such in other months within the audit period.



The statement and exhibits provided by DPW are not sufficient evidence and do not resolve the recordkeeping finding because they do not document the time an employee spent in connection with a federal election and the documents were provided after notification of the audit.

The Interim Audit Report recommended that DPW provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, Counsel stated that the employee recordkeeping finding appears to be one of the most common findings in recent audits of state and local parties. Additionally, Counsel added that the scope of the Commission's jurisdiction in relation to payments to employees with non-federal funds for exclusively non-federal activity has been a subject of recent Commission debate. Counsel believes the maintenance of monthly time logs is particularly burdensome for committees, such as DPW, that are heavily involved in non-federal election activity. Counsel stated that DPW participated in an unprecedented 13 non-federal elections during the 2012 election cycle. Counsel added that the non-federal elections arose unexpectedly as a result of the filing of petitions that led to the recall of 13 state senators, the lieutenant governor, and the governor. Counsel stated that the recall elections garnered nationwide attention.

Despite these contentions, Counsel acknowledged the need to improve its system of maintaining monthly time logs. Counsel stated that a web-based system for employees to enter and track time spent on federal election activity was developed. A screen shot of the new time log was also submitted. Counsel stated that having the new system electronically helps to ensure the records will not be lost or misplaced. Furthermore, Counsel stated that the web-based system complies with the requirements of Commission regulations.

Counsel raised the question as to whether the Commission should apply the employee log requirement to a party committee heavily involved in non-federal elections. However, the log requirement of 11 CFR §106.7(d)(1) also applies to payroll paid exclusively out of non-federal funds. The language is broad in that it applies the term "each employee" and "each employee" necessarily includes all of a committee's employees, including those who spend no time in connection with federal elections because zero percent is also a percentage of time spent in connection with federal elections. Counsel's statement that employees directly involved in supporting non-federal candidates performed no work in connection with federal elections needs to be documented in order to ensure that, in light of potential concerns about funding federal election related activity with federally non-compliant funds, it can be verified for accuracy.

The screen shot of the new time log shows employees are required to enter a name, description of work performed, pay period, hours spent in the pay period on non-federal activity, hours spent in the pay period on federal activity, and a certification that the information entered is accurate. If the web-based system tracks the time each employee

spends in connection with a federal election, as the screen shot suggests, then it is consistent with the Commission payroll log requirements for party committees at 11 CFR §106.7(d)(1). As such, DPW has complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report mentioned that DPW acknowledged there was a need to improve its system of maintaining monthly time logs. DPW developed a web-based system for employees to track time associated with federal election activity.

#### **E. Committee Response to the Draft Final Audit Report**

DPW's response to the Draft Final Audit Report provided no additional comments.

#### **Commission Conclusion**

On February 12, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPW failed to maintain monthly payroll logs to document the percentage of time each employee spent in connection with a federal election totaling \$3,627,262.

The Commission approved a finding that DPW failed to keep monthly payroll logs for the \$2,192,554 that DPW disclosed as having been paid with an allocation of federal and non-federal funds and \$28,972 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to the \$1,405,736 in payroll paid exclusively with non-federal funds during a given month and, as such, the matter is presented in the "Additional Issue" section.

## **Part V Additional Issue**

### **Recordkeeping for Employees**

#### **Summary**

As detailed in Finding 2 above, DPW did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to DPW employees totaling \$3,627,262, for which DPW did not maintain monthly payroll logs. This consisted of \$2,192,554, for which payroll was allocated with federal and non-federal funds, and \$1,434,708, for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, DPW acknowledged the need to improve its system of maintaining monthly time logs. As a result, DPW developed a web-based system for employees to track time associated with federal election activity.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding that DPW failed to maintain monthly payroll logs for the

\$1,405,736 in payroll paid from an exclusively non-federal account during certain months. Pursuant to Commission Directive 70<sup>10</sup>, these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$1,405,736 are not included in Finding 2.

### **Legal Standard**

The legal standard in Finding 2 is incorporated herein.

### **Facts and Analysis**

#### **A. Facts**

During fieldwork, the Audit staff reviewed disbursements for payroll. DPW did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, DPW did not maintain monthly logs for \$3,627,262 in payroll.<sup>11</sup> This amount includes payroll paid as follows to DPW employees.

- i. Employees reported on Schedule H4 and paid with a mixture of federal and non-federal funds during the same month (totaling \$2,192,554).
- ii. Employees reported on Schedule H4 and/or Schedule B and also paid with both a mixture of federal and non-federal funds and exclusively non-federal funds during the same month (totaling \$28,972); and
- iii. Employees paid exclusively with non-federal funds in a given month and not reported by DPW (totaling \$1,405,736).<sup>12</sup>

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the recordkeeping requirement with DPW representatives during the audit fieldwork and at the exit conference. DPW representatives asked questions for clarification and said they would respond after having time to thoughtfully review each issue. Subsequently, DPW representatives stated that payroll logs had not been identified nor other evidence indicating that they were maintained. However, DPW provided a statement contending that other information confirmed the basis on which employees were paid. DPW representatives supported this statement by providing exhibits with a basic job description for the employees and a narrative that stated, in part,

"Beginning in February, 2011 and continuing through the summer of 2012, Wisconsin held multiple elections in connection with various recalls of state-level elected officials. Recall elections for nine Wisconsin state senators were held during the summer of 2011. Recall elections for the Governor, Lieutenant Governor and four additional state senators were held during the spring and summer of 2012. Throughout 2011 and through the summer of 2012, the Committee and its staff were engrossed in these nonfederal

<sup>10</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf)

<sup>11</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

<sup>12</sup> Some of these employees were paid from federal funds and reported as such in other months within the audit period.

elections. Employees directly involved in supporting nonfederal candidates performed no work in connection with federal elections, while other employees were paid entirely with federal funds."

In addition, DPW submitted documentation identifying non-federal and federal election dates and events for both years 2011 and 2012, stating, "...as a result of these events, the Committee hired staff to work exclusively in connection with various nonfederal [sic] recall elections."

The statement and exhibits provided by DPW are not sufficient evidence and do not resolve the recordkeeping finding because they do not document the time an employee spent in connection with a federal election and the documents were provided after notification of the audit.

The Interim Audit Report recommended that DPW provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

### C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, Counsel stated that the employee recordkeeping finding appears to be one of the most common findings in recent audits of state and local parties. Additionally, Counsel added that the scope of the Commission's jurisdiction in relation to payments to employees with non-federal funds for exclusively non-federal activity has been a subject of recent Commission debate. Counsel believes the maintenance of monthly time logs is particularly burdensome for committees, such as DPW, that are heavily involved in non-federal election activity. Counsel stated that DPW participated in an unprecedented 13 non-federal elections during the 2012 election cycle. Counsel added that the non-federal elections arose unexpectedly as a result of the filing of petitions that led to the recall of 13 state senators, the lieutenant governor, and the governor. Counsel stated that the recall elections garnered nationwide attention.

Despite these contentions, Counsel acknowledged the need to improve its system of maintaining monthly time logs. Counsel stated that a web-based system for employees to enter and track time spent on federal election activity was developed. A screen shot of the new time log was also submitted. Counsel stated that having the new system electronically helps to ensure the records will not be lost or misplaced. Furthermore, Counsel stated that the web-based system complies with the requirements of Commission regulations.

Counsel raised the question as to whether the Commission should apply the employee log requirement to a party committee heavily involved in non-federal elections. However, the log requirement of 11 CFR §106.7(d)(1) also applies to payroll paid exclusively out of non-federal funds. The language is broad in that it applies the term "each employee" and "each employee" necessarily includes all of a committee's employees, including those who spend no time in connection with federal elections because zero percent is also a percentage of time spent in connection with federal elections. Counsel's statement that

employees directly involved in supporting non-federal candidates performed no work in connection with federal elections needs to be documented in order to ensure that, in light of potential concerns about funding federal election related activity with federally non-compliant funds, it can be verified for accuracy.

The screen shot of the new time log shows employees are required to enter a name, description of work performed, pay period, hours spent in the pay period on non-federal activity, hours spent in the pay period on federal activity, and a certification that the information entered is accurate. If the web-based system tracks the time each employee spends in connection with a federal election, as the screen shot suggests, then it is consistent with the Commission payroll log requirements for party committees at 11 CFR §106.7(d)(1). As such, DPW has complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report mentioned that DPW acknowledged there was a need to improve its system of maintaining monthly time logs. DPW developed a web-based system for employees to track time associated with federal election activity.

#### **E. Committee Response to the Draft Final Audit Report**

DPW's response to the Draft Final Audit Report provided no additional comments.

#### **Commission Conclusion**

On February 12, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPW failed to maintain monthly payroll logs to document the percentage of time each employee spent in connection with a federal election totaling \$3,627,262.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that DPW failed to maintain monthly payroll logs for the \$1,405,736 in payroll paid exclusively from a non-federal account during certain months. Some Commissioners voted to approve the Audit staff's recommendation. Others did not, citing the position of three Commissioners in the Final Audit Report of the Commission on the Georgia Federal Elections Committee, in support of the proposition that the Commission lacks jurisdiction to impose recordkeeping and documentation requirements on exclusively non-federal activity.

These expenses are discussed in the "Additional Issue" section pursuant to Commission Directive 70.<sup>13</sup>

<sup>13</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).